IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No. 887 of 2007

Judgment reserved on:3.10.2007

Date of decision: 11.10.2007

Harbhajan Singh **Petitioner**

Versus

State of Himachal Pradesh and others **Respondents**

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] Yes

Mr. G.C.Gupta, Senior Advocate, with Mr. Ramakant Sharma, counsel for the petitioner.

Mr. R.M.Bisht, Deputy Advocate General, for respondent No.1.

Mr. H.S.Matewal, Senior Advocte, with Ms. Madhu Dayal, Deputy Advocate General (Punjab), Mr. Chetan Dayal, Advocate and Mr. Ankush Sood, Advocate for respondents No. 2 & 3.

Mr. N.K.Sood, counsel for the State of Rajasthan.

Mr. D.S.Nehra, Senior Advocate, with Mr. N.K.Sood, counsel for BBMB.

Mr. Rameshwar Malik, Additional Advocate General, with Mr. N.S.Chandel, Advocate, for the State of Haryana.

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Per Deepak Gupta, J.

The grievance of the petitioner is that respondents No. 2 & 3 i.e. the State of Punjab and Secretary Irrigation (Canal) to the Government of Punjab are causing uncontrolled damage to the property of the petitioner and other villagers in villages Mohtli and Majra in Tehsil Indora by releasing huge quantity of water suddenly and without warning. This results in flooding and washing away the land of the petitioner and similarly situated persons. The petitioner has prayed for the following amongst other reliefs:-

(i) That the respondents No. 2 & 3 may very kindly be directed to divert the water of Madhavpur Beas Link Canal (M.B. Link Canal) entering in Himachal to the territory of Punjab so as to restrain the flow of the said water through Mohtli and Majra villages in Tehsil Indora, District Kangra, H.P.

(ii) That the respondents No. 2 & 3 may also be directed to compensate the petitioner and other affected persons with the flow of the water of M.B.Link Canal through these villages Mohtli and Majra, Tehsil Indora, District Kangra for damages and inconvenience caused to them with effect from the year 1967 to date.

(iii) That the respondent No. 1 may be directed to restrain the flow of water of M.B. Link Canal through such villages of Tehsil Indora, District Kangra, so as to protect the properties of the petitioner and other similarly situated persons."

We had issued notice of the petition on 27.9.2007 and keeping in view the allegations made by the petitioner we had also directed the Superintending Engineer, IPH, Nurpur to visit the spot and submit a report to this court. The Superintending Engineer, in compliance to the orders of this court, submitted his report which reads as follows:-

> "Water of river Ravi has been diverted at Madhopur near Pathankot in Punjab by constructing head works across the river during 1917 and 1923 by the then Government for carrying water for irrigation purpose through UBDC (Upper Bari Doab Canal). In the year 1954 another canal named as Madhopur Beas Link Canal has been constructed upto Chakki Khud with carrying capacity of 10,000 cusecs water to meet the irrigation demand of Rajasthan State. Regulatory structure constructed at R.D. 11,000 and 34,000 on this Madhopur Beas Link Canal to ensure the designed discharge in this canal and releasing surplus water in natural drainage upto Chakki Khud. After Chakki Khud water enters into Beas River, and thereafter

diverted to Rajasthan State for irrigation purpose. Thus beneficiary States are Punjab and Rajasthan. Entire system is managed by Punjab Irrigation Department.

MB Link Canal passing through Punjab area is lined upto RD 50600 where area of Air Force Station, Pathankot ends and entered in Himachal Pradesh. A water fall has been created at RD 50600, after this point water flow through Himachal Pradesh territory in a length of about 3 k.m. through unprotected banks and thereafter in Pubjab territory and finally to Chakki Khad a tributary of River Beas. Since banks of the flowing water in Himachal Territory are unprotected, water flows freely and washed away sizable chunk of agricultural land due to erosion of the banks. Width of lined canal (pucca canal) is 134'-00" (40.85 m) at RD 50,600 and thereafter waterway width goes on increasing as water flows further towards chakki khad through unprotected banks and it is about 150 m. wide where Himachal Pradesh territory ends. Due to continuous flow of water, width of the waterway is increasing by soil erosions on unprotected banks and valuable agricultural land is being lost day by day.

Agricultural land can be saved if adequate protection work or lined canal is constructed in the entire length on both banks of Himachal Pradesh territory or water is diverted through Punjab territory at RD 34,000 where surplus water flow through NALWA NALAH by making adequate arrangements

by beneficiary states. Sketch showing flow of water from river Ravi to Chakki Khad is attached."

When the matter next came up before us on 9.7.2007, respondents No. 2 and 3 were not present despite service and thereafter we had passed certain interim directions to protect the property of the petitioner. Thereafter the State of Punjab put in appearance and contested the petition. Applications were filed on behalf of State of Rajasthan, State of Haryana and Bhakra Beas Management Board (BBMB) praying that they be impleaded as party respondents in this case. We had allowed these applications on August 3, 2007 and the aforesaid parties were added as respondents No. 4 to 6.

The case of the petitioner, as set up in the writ petition, was that the State of Punjab constructed the Madhopur Beas Link Canal (M.B.Link Canal) and the water of M.B. Link Canal was being discharged in the territory of villages Motli and Majra prior to the year 1967. This water has been causing damage to the valuable agricultural properties of the petitioner and other villagers and is a constant threat to their lives. The M.B. Link Canal is a properly constructed lined Canal within the territory of Punjab upto the point it enters the territory of the State of Himachal Pradesh. Thereafter the waters of the M.B. Link

Canal have been permitted to flow unguided and un-channeled in the territory of Himachal Pradesh causing damage to the property of the petitioner and other similarly situate persons. The case of the petitioner further is that instead of discharging the water from the M.B.Link Canal into the territory of State of Himachal Pradesh, the respondent-State of Punjab can easily be directed to divert the water through the Nalwa Nullah which is also known as the Gulfur Chakki. The State of Punjab can also channelize the water from the main UBDC Canal as well as the Farida Nagar feeder or through Nalwa Nullah, but should not be permitted to discharge the water in the territory of Himachal Pradesh.

The States of Punjab, Haryana and Rajasthan and the BBMB have filed similar affidavits in reply. The first objection they have taken is that this is an inter-State water dispute and, therefore, this court has no jurisdiction to hear the same. It is also contended that the petitioner has not approached this court with clean hands and that he is trying to settle his personal dispute under the garb of a so called public interest litigation. It is also alleged that the petitioner owns a stone crusher and it is to protect his stone crushing activity that he wants that

water should not be discharged into the area of State of Himachal Pradesh. According to the respondents, the intention of the petitioner is that if no water is discharged, he shall be able to extricate the boulders from the dry khud and use them in his crusher.

The respondents aver that the M.B.Link Canal was constructed with a view to productively and usefully utilize the water of the river Ravi. As far back as in the year 1917 the water of river Ravi was diverted to the Upper Bari Doab Canal (UBDC) at Madhopur near Pathankot. In 1923 a barrage was constructed on the river Ravi at Madhopur head works. An agreement was entered into between the then State of Punjab (which included the State of Haryana which was carved out of the State of Punjab in 1966 and portions of State of Himachal Pradesh which then fell in the State of Punjab) and the State of Rajasthan. Under this agreement it was agreed that the State of Punjab would provide water to the State of Rajasthan. The M.B. Link Canal takes off from the UBDC main line at RD 11000 and is a pucca Canal upto RD 50600 near the Air Force Station, Pathankot. The M.B. Canal has the capacity to carry 10,000 cusecs of water which were to be sent to the State

of Rajasthan as per the terms of the agreement. The case of the respondents is that from RD 50600, the water from the M.B. Link enters the State of Himachal Pradesh through a low height water fall and then flows through an open natural creek. According to the respondents this is not a man made creek, but is a natural creek and the waters flow for 3 k.m. in the territory of the State of Himachal Pradesh and then enter Chakki Khud. The respondents also submit that Nalwa Nullah (Gulfur Chakki) which is about 10 k.m. in length is also a natural creek which takes off at RD 33450 from the M.B. Link Canal and merges in the Chakki Khud down-stream of the aforesaid natural creek which flow through the territory of the State of Himachal Pradesh. According to the respondents the State of Rajasthan is the beneficiary of the water which flows through M.B. Link Canal and it is not technically feasible to divert the water of M.B. Link Canal into the Nalwa Nullah or the UBDC.

The State of Punjab, in its reply, has made reference to writ petition No. 16977/06 filed by one Harjit Singh Walia in the Punjab and Haryana High Court. It is averred that the land of the petitioner is near the land of Harjit Singh Walia. This petition was disposed of by the

Punjab & Haryana High Court with a direction to the Chief Engineer (Canals) Punjab to look into the grievance of Harjit Singh Walia and to pass a speaking order on the legal notice sent by him. The Chief Engineer (Canals) called for reports from various officials and passed a speaking order in which he held that M.B. Link Canal is maintained by the Irrigation Department of the State of Punjab with 100% funds provided by the State of Rajasthan. Since funds had to be provided by the State of Rajasthan, a joint survey was carried out by the officials from the State of Rajasthan and State of Punjab and it was decided to provide protection work down stream of RD 50600. An amount of Rs. 4.36 crore was to be spent on these works out of which Rs. 3.10 crore was earmarked only for protection of agricultural land down stream of RD 50600. According to the respondents this includes the land of the petitioner in the present case. However, the authorities were of the view that other than providing some protective measures it was not technically or financially feasible to construct a fully lined canal in the territory of the State of Himachal Pradesh.

We are first dealing with the issue as to whether the petition raises an inter-State water dispute

and, therefore, this court has no jurisdiction to decide the matter. Reference in this behalf may first be made to Article 262 of the Constitution of India which provides that the Parliament may by law provide for adjudication of any dispute or complaint with respect of the use, distribution or control of waters of, or in, an inter State river or river valley. Parliament has been given the power under the Constitution to exclude the jurisdiction of the Supreme Court or any other court in respect of such disputes or complaints.

Counsel for the respondents referred to the provisions of the States Reorganisation Act, 1956, especially Section 107 thereof wherein power has been given to the Central Government to give certain directions.

Parliament in exercise of the powers vested under Article 262 of the Constitution of India has framed the Inter State Water Disputes Act. Under Section 2(c) of the aforesaid Act water dispute has been defined as follows:-

"2(a) x x x x x x x x x x x x x x x x x x x x

(b) x x x x x x x x x x x x x x x x x x x x x

(c) “water dispute” means any dispute or difference between two or more State Governments with respect to –

(i) the use, distribution or control of the waters of, or in, any inter-State river or river valley; or

(ii) the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement; or

(iii) the levy of any water-rate in contravention of the prohibition contained in Section7.”

Section 4 provides for the constitution of a Tribunal and Section 5 provides that the Tribunal shall have the jurisdiction to decide inter State water dispute. Section 11 of the Act debars any court in the country from exercising jurisdiction in respect of any water dispute which may be referred to the Tribunal under this Act. The contention of the respondents is that the dispute raised by the petitioner is a water dispute within the meaning of the Inter State Water Dispute Act 1956 and, therefore, this court has no jurisdiction to decide the matter. In support of this contention the respondents rely upon a judgment of Apex Court in **Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam Vs. Union of India and others AIR 1990 SC 1316.**

There can be no dispute with the proposition that if a water dispute within the meaning of The Inter State Water Disputes Act is raised, this court would have no jurisdiction to decide the same. However, if reference is made to the nomenclature of the Act as well as to the definition of "water dispute", quoted hereinabove, it is obvious that the water dispute has to be a dispute or difference between two or more State Governments**.** The first and foremost ingredient is that the dispute should be an inter State water dispute. In this case there is no dispute between the States. All the States agree that the State of Rajasthan is entitled to a certain amount of water. The States are also ad idem on the question as to how and in what manner the water has to be supplied to the State of Rajasthan. The dispute raised by the petitioner is only that his land be protected. This, by no stretch of imagination, can be called an inter State water dispute. Therefore, this contention is rejected.

The next contention raised is that the petitioner has raised the bogey of public interest just to protect his vested business interest. To support this assertion the respondents submit that one of us, (Sanjay Karol, J.) had passed a detailed order in CWP No. 967 of

2006 asking the State Government to complete proceedings under Section 118 of the H.P. Tenancy and Land Reforms Act (for short the Act) which have been initiated against the present petitioner. Reliance has also been placed on another order passed by a Division Bench of this Court on October 4, 2005. By referring to these orders the respondents argue that the petitioner has purchased the land in violation of Section 118 of the Act in connivance with the revenue officials. We are clearly of the view that since the said dispute is the subject matter of other litigations and certain orders have been passed therein, it would not be appropriate to us to enter into this dispute as to whether the petitioner is the rightful owner of the land or not. Suffice to say, that till the matter is decided against the petitioner in appropriate proceedings, we cannot brush aside the revenue record in which the petitioner is stated to be an owner. It is, however, true that no other members of the public for whom this purported public interest litigation has been filed, approached us. There is no material on record to show that the members of the public whose lands are being damaged are unable to approach this court or any other court due to their being in a disadvantaged financial

position. We are, therefore, not treating this petition as a public interest litigation. We proceed to decide this matter solely on the basis that it is a petition filed by the petitioner for protection of his own land.

According to the petitioner himself he has purchased the land sometime in the year 1985. The petitioner in the writ petition has clearly stated that water in the M.B. Link Canal has been flowing prior to the year 1967. In the prayer clause which has been quoted above, he has made a specific prayer that respondents No. 2 and 3 be directed to compensate the petitioner and other affected persons for damages and inconvenience caused to them w.e.f. the year 1967 till date. The respondents in reply have in fact stated that M.B. Link Canal was constructed in the year 1954. The petitioner purchased the land in 1985 when water was already flowing through a creek adjoining his land. The nuisance, if any, was already in existence when the petitioner purchased the land. The respondents, therefore, urge that the petitioner could not claim the relief sought for since the alleged nuisance which, according to the petitioner has caused damage, was in existence prior to his purchasing the land. The petitioner, in rejoinder, has taken a somersault.

In the rejoinder the petitioner submits that in fact the waters were diverted into the M.B. Link Canal and further into the territory of the State of Himachal Pradesh only in the year 1992 after a judgment was passed by the Civil Judge, Pathankot in Civil Suit No. 111, decided on 29.7.1988 by the Sub Judge Ist Class, Pathankot, titled as Gram Sudhar Sabha Vs. State of Punjab. Copy of the judgment has been attached by the State of Punjab. We have gone through the same. It is apparent that some villagers had urged that waters from the M.B. Canal should not be diverted into the Nalwa Nullah/Gulfur Chakki which was a small hill torrent. The Sub Judge passed a decree restraining the State of Punjab or their agents from discharging any water from regulator constructed at R.D. 11000 on the UBDC into Nalwa Nullah without constructing a proper regulator fixed with gates at Dhira Barrage.

Learned counsel for the petitioner has been at pains to submit that it was only to comply with this order that the waters were thereafter diverted into M.B. Canal. This argument is totally baseless and without any force. As observed above, the case of the petitioner as set up in the writ petition was that the M.B. Canal was

constructed prior to the year 1967. Admittedly the M.B. Link Canal is a pakka lined Canal upto RD 50600 which is much beyond RD 33450 where the Nalwa Nullah/Gulfur Chakki takes off from the M.B. Link Canal. It is apparent that the M.B. Link Canal was constructed and in existence upto RD 50600 much prior to 1967. It stands established on record that it was constructed in 1954. It is also proved on record that 10000 cusecs of waters were being diverted into the M.B. Link Canal which is a lined canal upto R.D. 50600. The water has to flow after from RD 50600 also. It cannot vanish into thin air. The land beyond RD 50600 falls in the territory of the State of Himachal Pradesh, but prior to 1966 this land fell within the State of Punjab.

It is more than apparent that the M.B. Link Canal upto point RD 50600 was in existence much prior to the petitioner purchasing the land in question. At this stage we cannot permit the petitioner to urge that the water should be diverted through some other channel. It would be totally improper and illegal to put the clock back more than half a century later. We are also of the considered opinion that the vexatious questions that how the land of the petitioner is to be protected and how the

damages, if any caused to the petitioner, are to be assessed are matters which involve highly disputed questions of fact which cannot be decided in a writ petition. The remedy, if any, of the petitioner, is to file a civil suit.

In view of the aforesaid discussion we find no merit in this writ petition which is dismissed with costs quantified at Rs. 10,000/-. Costs to be paid to the H.P. High Court Bar Association Welfare Fund within 4 weeks from today.

(Deepak Gupta), J.

October 11 2007(K) (Sanjay Karol), J.